Surrogate's Court
of the
County of New York

31 Chambers Street
New York, N.Y. 10007

Chambers of
S. Samuel Di Falco
Surrogate

February 4th, 1976

Hon. Joseph R. Pisani,
Chairman, The Temporary State
Commission On Child Welfare,
270 Broadway,
New York, N.Y. 10007

Dear Joe,

I am pleased to inform you that at the January 30th, 1976, meeting of the Executive Committee of the Surrogates' Court Association, of which I am Chairman, the enclosed proposed Memorandum was unanimously adopted and approved.

The Memorandum was again adopted and approved at the General Meeting of all of the Surrogates held on January 31st, 1976.

I have been authorized to inform you as to the position that the Surrogates are taking in the matter before your Committee for consideration.

If there is anything further that you feel that I can be of assistance, please feel free to call upon me.

With kindest personal regards and best wishes, I am

Sincerely yours,

S. SAMUEL DI FALCO,
Administrative Judge

SSDiF/fran
enc.

PROPOSED MEMORANDUM TO THE TEMPORARY COMMISSION ON CHILD WELFARE

The questions presented are:

(1) Whether Surrogate Court's jurisdiction should be expanded to include permanent neglect proceedings;

(2) whether Surrogate Court's jurisdiction should be expanded to include termination of parental rights proceedings based on mental illness and retardation;

(3) any comments on the abandonment law.

I have looked at the statutes involved in all of these and have outlined herein some comments.

As to permanent neglect proceedings (Family Court Act, Article 6): A permanently neglected child is one under 18 years of age, in the care of an agency, institution, authority or home, whose parent has failed for over a year since placement to plan for the child or maintain contact "<u>although physically and financially able to do so</u>" (emphasis my own). These proceedings provide for two hearing stages, a fact finding hearing and a dispositional hearing. At such hearings probation department reports are often used in evidence.

It is my opinion that at the present time the Surrogate's Court is not physically or financially geared to work in the manner that the Family Court does. The Family Court has probation services under §252 of the Family Court Act which we do not have. Under the Family Court Act §142 the Judge of that court may officially visit schools and institutions to see how the child behaves, etc. The Family Court Act §162 provides for special rooms for the children in the court when hearings are held. We are not physically geared for that.

Further, under the Family Court Act their "law guardians" who are appointed by the Appellate Division receive some reimbursement. In Surrogate's Court we appoint guardians who serve for no fee. It seems more equitable to have some reimbursement for attorneys when they are asked to do substantial work. If these proceedings were allowed to be brought in our court we would be forced to ask more and more lawyers to serve without compensation in a situation where a lawyer could be compensated if the same action had been brought in Family Court.

As to mental illness and mental retardation of parents, leading to commitment of destitute or dependent children (Social Services Law, §384, subd. 7), again the Family Court, now the only court expressly so empowered, is better set up to handle these cases. The Family Court is authorized by statute to appoint psychiatrists, to maintain psychiatric clinics, and to appoint counsel for indigents where necessary.

As to commitment of infants due to abandonment by their parents: The present system of concurrent jurisdiction creates problems. The Family Court has a different policy towards Orders of Publication than we have under SCPA (§309: four times) which creates confusion and is often inequitable. Perhaps publication ought to be equated by law in both courts. The Family Court personnel are more familiar with the practices and procedures of the agencies involved. Further as a practical note the Surrogate's Court is becoming so overloaded with these abandonment cases in some counties that with our present staff it cuts into our time to some degree.

Because there are many lawyers who prefer the Surrogate's Court for these proceedings, despite the extra work, it is my view that we should continue concurrent jurisdiction in these cases. Surrogates presumably can, in specific cases, dismiss without prejudice to Family Court proceedings, any case which appears to this court as one in an inconvenient forum (CPLR 327).